CF0000061216

Cri A 172/96

Div. Bench (Criminal)

High Court of Madhya Pradesh
JABALPUR
24 JAN 1996
Reg. No. 86
Recept Clerk
High Court, Jabalpur

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

APPEAL OF PRISONER

No. 3303/50 Name દામોદરલાલ

Father's name ભુરાભાઈ ખાંડિયા વાસિક આમા પરસાદ

Residence જિલ્લો વિલાસપુર (મ.પ્ર.) Age ૪૦ વર્ષ

Sentenced to આજીવન કારાવાસ On ૫/૧૦/૯૬

Under section ૩૦૨ આ.દં.વિ. by પ્રથમ અતિરિક્ત સત્ર ન્યાયાધીશ વિલાસપુર (મ.પ્ર.)

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ૫/૧/૯૬

2 Date on which copy received ૧૨/૧/૯૬

3 Date on which Appeal sent ૧૬/૧/૯૬

4 Whether the prisoner wishes to be represented or ~~not~~ – Yes / No

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No. 3306/50 Name દામોદરલાલ બાપુ ખુરાભાઈ

Confined in કેન્દ્રીય Jail બિલાસપુર (મ.પ્ર.)

No. 36 (Law) Dated 16/1/96 1996

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ ચીફ જ્યુડીશીયલ

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

સેશન્સ નિર્ણય પ્રતિલિપિ
સા.પ્ર. ક્રમાંક ૩૦૨/૯૩

Superintendent
Jail (M.P.)

Date of receipt in office

Date of receipt record to accompany the

Memo of Appeal to the Appellate court

No Dated 199

Forwarded to the

Date of receipt in Appellate Court

(P. T. O.)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

(27)

मामला क्रमांक C.A. 172/96 सन् 200

..... विरुद्ध .....

आदेश का दिनांक,आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B: Hon'ble Shri L.C.Bhadoo,
Hon'ble Shri V.K.Shrivastava, JJ.
14.12.2005

Smt. Usha Chandrakar, Counsel for the appellant.

Shri G.K.Beriwal, Dy.Advocate General/Addl. Public Prosecutor for the State.

Oral judgment.

This appeal is directed against the judgment of conviction and order of sentence dated 4th January, 1996 passed by Addl. Sessions Judge, Bilaspur in sessions trial No.302/93 whereby the learned Addl. Sessions Judge after holding the accused-appellant guilty for the commission of the offence under Sections 302 sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that on 07.06.1993 at about 4.00 P.M. when complainant Samaru P.W.3 was at his new residence, some quarrel took place between the deceased Sahadev and the accused in connection with the land and the accused picked up an axe and attacked Sahadev, as a result of which, he received injuries on the head and died on the spot. The report of this incident was lodged

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आदेश पत्रक

(20)

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

by Samaru P.W.3. When he was informed by Jaikaran Singh P.W.2, he reached the house and saw the dead body of his father.

On receiving this report, S.H.O. Police Station Pasan S.R.Parihar P.W.12 registered the F.I.R. Ex.P.1. After registering the Crime No.58/1993, S.R.Parihar went to the scene of occurrence and prepared the *Panchnama* of body Ex.P.4 and thereafter sent the body for post-mortem examination Ex.P.15. The post-mortem was conducted by Dr. K.S.Pendro P.W.8 and he prepared the post-mortem report Ex.P.6 and connected injury report is Ex.P.7. On 08.06.1993 on the information Ex.P.10 given by the accused, the weapon of offence axe was recovered under Ex.P.13. The plain soil and the bloodstained soil was also taken into possession under Ex.P.12 and the bloodstained cloth of the accused was also taken into possession under Ex.P.11, which is meant for covering the head.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Pendra Road who in turn committed the case to the Sessions Judge, Bilaspur from where the learned first Addl. Sessions Judge received the case on transfer for trial. The prosecution in order to prove the charge against the accused examined as many as 12 witnesses. Statement of the accused appellant

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आदेश पत्रक

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

was recorded under Section 313 Cr.P.C. in which he denied the prosecution evidence and stated that on account of animosity the witnesses have deposed against him and he is innocent and has been falsely implicated in the crime. The learned Addl. Sessions Judge after hearing the Addl. Public Prosecutor and the counsel for the accused convicted and sentenced him as mentioned in paragraph-1 of the judgment.

We have heard the learned counsel for the appellant Mrs. Usha Chandrakar ~~on behalf of the accused appellant~~ and Shri G.K.Beriwal, Addl. Public Prosecutor on behalf of the State. The fact of the death of Sahadev as homicidal in nature has not been disputed by the counsel for the appellant. Apart from that, from the evidence of P.W.2 Jaikaran Singh, an eye witness and from the evidence of Dr.K.S.Pendro P.W.8 in which he has stated that there was a compound fracture in the size of 1" x ½" on occipital region and occipital bone was fractured into four pieces, transverse margins were irregular. The brain membrane was ruptured and brain material was coming out of it. The second injury was lacerated wound in the size of ½" x ½" upto deep bone and maxilla bone was found fractured. Third injury was on the parietal region behind the right ear and upto bone deep in the size of 1" x ½". In his opinion, the injuries were sufficient in the ordinary course of nature to

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आदेश पत्रक

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

cause death and the death was homicidal in nature. Therefore, in view of the evidence of eye witness Jaikaran Singh and Dr. K.S.Pendro P.W.8, it is established that the death of the Sahadev was homicidal in nature. The Doctor has also opined that the injuries which were found on the head of the deceased could be caused by the backside of the axe.

Now coming to the involvement of the accused-appellant in the crime in question, learned counsel for the accused appellant argued that P.W.2 Jaikaran Singh being interested witness, as he was grandson of the deceased Sahadev, therefore, his testimony cannot be believed. She further argued that the recovery of the sharp weapon of offence (axe) is also doubtful as the witnesses of the seizure memo have not supported.

On the other hand, Mr. G.K.Beriwal, learned Addl. Public Prosecutor has supported the judgment.

Having heard the counsel for the parties, we have perused the evidence available on record. P.W.1 Subso Bai is the wife of the accused Pyarelal. In the examination-in-chief she has categorically stated that her husband Pyarelal and deceased Sahadev quarrelled with each other in connection with the construction of the house, upon which, the

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आदेश पत्रक

(31)

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused attacked Sahadev with the axe on the head of Sahadev, as a result of which, he fell down. In cross-examination, this witness has stated that she went to field for the purpose of plucking *Mahua* flowers and fruits. When she returned, she saw that her father-in-law was lying. P.W.2 Jaikaran Singh has stated that on the fateful day i.e. Monday at about 4.00 P.M. he was going to pluck *Mahua* fruits, on the way rain started, therefore, in order to protect himself from the rain he entered the house of Pyarelal and he saw that the accused was attacking the deceased with the axe and assaulted three times, as a result of which, Sahadev succumbed to the injuries spontaneously. He informed the village Kotwar and from there he, Kotwar and Mangal Singh went to the Police Station for lodging the report. In the cross-examination, this witness denied all the suggestions made by the defence counsel and has categorically stated that he had witnessed the crime. It is true that this witness is relative of Sahadev and also relative of accused and the settled law on the point is that the evidence of a witness cannot be rejected merely on the ground that the witness is relative of the deceased. However, the Court is required to scrutinize the evidence of such a witness with care and circumspection in order to find out the truth.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In order to prove the charge against the accused, if we examine the evidence of Jaikaran Singh, he is related but has categorically stated that he witnessed the crime and said that three injuries were caused by the accused with the axe on the head of Sahadev. The evidence of this witness stands corroborated by the medical evidence and as per the injury report Ex.P.7, there were lacerated wound on the head of Sahadev. The injury no.1 was compound fracture on the occipital region, the second lacerated wound and fractured in the size of ½" x ½" on the left eye socket and the third lacerated wound was fractured of mastoid right bone 1" x ½" upto mastoid bone and the same has been proved by Dr. K.S.Pendro P.W.8 who examined and conducted the post-mortem on the body of Sahadev. Therefore, in view of the medical evidence and the ocular evidence, the evidence of Jaikaran Singh P.W.2 inspires confidence and there is no reason to discredit and disbelieve the evidence of Jaikaran Singh. As far as the recovery of the axe is concerned, P.W.10 Jairam Singh has stated that the axe was recovered under P.13 which was lying at the distance of 2 - 4 steps from the body. P.W.9 Mohardas has turned hostile and has not supported the prosecution case. P.W.12 S.R.Parihar has categorically stated that one axe was recovered under Ex.P.13 near the house of the accused. Therefore, in view of the above evidence of investigating officer, the

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 7 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

axe in question was recovered near the house and as per memorandum Ex.P.10 given by the accused.

Doctor has opined that the injuries were sufficient in the ordinary course of nature to cause death and the same were caused by the axe which was shown to him and recovered from the place of occurrence. Therefore, we are of the considered opinion that the finding of the trial Court regarding involvement of the accused in the crime in question, is established. The same is based on legal evidence and does not require any interference by this Court.

In the result, we do not find any substance in this appeal and the same is liable to be dismissed and it is dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
V.K. Shrivatava
Judge

Arjun

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